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BRIEFS

No. 16-1466

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In the
Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, LINDA CHAVEZ, GOLDWATER INSTITUTE, THE FAIRNESS CENTER, GREGORY J. HARTNETT, ELIZABETH M. GALASKA, ROBERT G. BROUGH, JR., JOHN M. CRESS, PIONEER INSTITUTE, INC., AND EMPIRE CENTER FOR PUBLIC POLICY, INC. IN SUPPORT OF PETITIONER

DEBORAH J. LA FETRA
Counsel of Record
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
E-mail: DLaFetra@pacificlegal.org

Counsel for Amici Curiae Pacific Legal Foundation, et al.

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QUESTION PRESENTED

Twice in the past five years this Court has questioned its holding in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), that it is constitutional for a government to force its employees to pay agency fees to an exclusive representative for speaking and contracting with the government over policies that affect their profession. *See Harris v. Quinn*, __ U.S. __, 134 S. Ct. 2618, 2632-34 (2014); *Knox v. SEIU, Local 1000*, 567 U.S. 298, __, 132 S. Ct. 2277, 2289 (2012). Last term this Court split 4 to 4 on whether to overrule *Abood*. *Friedrichs v. Cal. Teachers Ass'n*, __ U.S. __, 136 S. Ct. 1083 (2016).

This case presents the same question presented in *Friedrichs*: should *Abood* be overruled and public-sector agency fee arrangements declared unconstitutional under the First Amendment?

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INTEREST OF AMICI CURIAE

Pacific Legal Foundation (PLF) was founded in 1973 and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind.[1] Among other matters affecting the public interest, PLF has repeatedly litigated in defense of the right of workers not to be compelled to make involuntary payments to support political or expressive activities with which they disagree. To that end, PLF attorneys were counsel of record in *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990); *Brosterhous v. State Bar of Cal.*, 12 Cal. 4th 315 (1995); and *Cumero v. Pub. Emp't Relations Bd.*, 49 Cal. 3d 575 (1989), and PLF has participated as amicus curiae in all of the most important cases involving labor unions compelling workers to support political speech, from *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), to *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298 (2012), *Harris v. Quinn*, 134 S. Ct. 2618 (2014), and *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 1083 (2016).

Linda Chavez has written extensively on labor union issues. She co-authored *Betrayal: How Union Bosses Shake Down Their Members and Corrupt American Politics* (2004), which argues that unions

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[1] Pursuant to this Court's Rule 37.2(a), all parties received notice of Pacific Legal Foundation, et al.'s intent to file this brief more than 10 days in advance, and have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

have abandoned their traditional role of organizing workers and representing their interests through collective bargaining, and have become a de facto arm of the Democratic Party, using union dues to provide staff, election materials, and other in-kind contributions to candidates at the local, state, and federal levels. In 2001, President Bush nominated Chavez to be Secretary of Labor, but she subsequently withdrew her name from consideration. She was formerly the Assistant to the President of the American Federation of Teachers (AFT) and editor of the union's newspaper, American Teacher, and assistant director of legislation at the AFT, where she worked from 1974-1983.

The Goldwater Institute was established in 1988 as a non-partisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files amicus briefs when it or its clients' objectives are directly implicated. The Goldwater Institute seeks to enforce the features of state and federal constitutions that protect individual rights, including the rights to free speech and free association. To this end, the Institute is engaged in policy research and analysis pertaining to union fees and dues, professional licensing fees, and related issues. Additionally, the Goldwater Institute is currently representing a member of the South Dakota State Bar in a challenge to the constitutionality of compulsory member dues in that state. *See Fleck v. Wetch*, Case No. 16-1564 (8th Cir. filed Mar. 3, 2016).

The Fairness Center is a nonprofit public interest law firm that provides legal services to those injured by public employee union officials. The Fairness Center supports the Petitioner's Petition for Writ of Certiorari because it represents certain clients whose rights have been violated through the seizure of so-called "fair share" fees, and it desires to serve and further those clients' interests. As a further interest, the Fairness Center currently represents fellow *amici* Gregory J. Hartnett, Elizabeth M. Galaska, Robert G. Brough, Jr., and John M. Cress, in their lawsuit, *Hartnett, et al. v. PSEA, et al.*, Case No. 17-cv-00100 (M.D. Pa. filed Jan. 18, 2017), challenging Pennsylvania laws that permit public-sector unions, pursuant to the holding in *Abood*, to seize so-called "fair share" fees from nonmember public employees as a condition of their employment.

Mr. Hartnett is an art teacher employed by the Homer-Center School District and is in his eighteenth year of teaching. He is an avid runner and directs a hunting club in his school district. Ms. Galaska is in her tenth year of teaching and is a public-school teacher and librarian for the Twin Valley School District. In addition to having some of her material published, Ms. Galaska has received numerous awards and recognitions—most recently in 2017 being awarded the Mount Vernon Institute Study Scholarship. Mr. Brough is a history and reading teacher employed by the Ellwood City Area School District and has been teaching for twenty-four years. He is a former football and baseball coach, and was previously a drug and alcohol counselor. Mr. Cress, in his eighth year of teaching, is a learning math support teacher for the Ellwood City Area School District. In addition to starting a board game club at Lincoln High

School in Ellwood City, Mr. Cress was presented with the "Child Advocate of the Year" award, given to him by the Wesley Spectrum foster care agency while serving as a foster parent.

These four Pennsylvania public-school teachers object to having any fees seized from their wages and given to the Pennsylvania State Education Association (PSEA) and its affiliates as a condition of their employment to pay for union representation for which they never asked. They each disagree, respectively, with various political positions and actions taken by the PSEA and its affiliates, including certain positions taken by the unions in collective bargaining. Like many other teachers across the Commonwealth of Pennsylvania, they find it offensive that, as a condition of their employment, they are compelled to fund the inherently political activities of a private entity, particularly when the entity takes positions contrary to their own views and beliefs. As such, these four Pennsylvania teachers have a strong interest in this Court granting Petitioner's Petition for Writ of Certiorari, as it would likely resolve the question in their current case.

Pioneer Institute, Inc., is an independent, non-partisan, privately funded research organization that seeks to improve the quality of life in Massachusetts through civic discourse and intellectually rigorous, data-driven public policy solutions based on free market principles, individual liberty and responsibility, and the ideal of effective, limited, and accountable government. The Institute focuses on achieving policy goals in four issue areas: increasing access to high-performing schools and affordable, high-quality health care; ensuring that government services are efficient, accountable, and transparent;

expanding prosperity; and economic opportunity. PioneerLegal, as the public-interest law initiative of the Institute, utilizes a legal-based approach to work to change policies that adversely affect the public interest in the Institute's core policy areas. PioneerLegal's substantive work is consistent with the mission of the Institute as it clearly develops and promotes its brand as a public-interest law initiative.

The Empire Center for Public Policy, Inc., is an independent, non-partisan, non-profit think tank based in Albany, New York. The Center's mission is to make New York a better place to live and work by promoting public policy reforms grounded in free-market principles, personal responsibility, and the ideals of effective and accountable government.

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

The Illinois Public Labor Relations Act authorizes public employee unions to collect "fair share" or "agency shop" fees from non-member employees. Two non-member public employees intervened in a lawsuit to invalidate this law as an unconstitutional infringement of their First Amendment rights.[2] The Seventh Circuit Court of Appeals held that one employee was barred because of previous litigation and that the claims of the other employee (Mark Janus) were barred solely because of this Court's decision in *Abood v. Detroit Bd. of Educ.*, which permits unions to garnish wages of non-

[2] The case was originally brought by Illinois Governor Bruce Rauner, who was dismissed for lack of standing. The employees were permitted to intervene to continue the lawsuit.

member employees for the purpose of collective bargaining and contract administration.

As this Court acknowledged in *Knox* and *Harris*, the decision in *Abood* was based on faulty premises and an unrealistic view of public employee unionism, with the resulting infringement of their individual rights. The decision in *Harris* essentially invited the case now before the Court, as evidenced by the prompt grant in *Friedrichs*. The status quo was affirmed in a 4-4 split decision in *Friedrichs* after the passing of Justice Scalia, leaving the underlying controversy still pending. This case now clearly presents the very issues this Court has previously been willing to consider.

Abood has stood as a blot on individual rights for 40 years. This case clearly puts before the Court the question of whether to rid our constitutional jurisprudence of this aberration that permits states to violate individuals' First Amendment rights for the benefit of public employee unions' collective politicking. This Court's decisions in *Knox* and *Harris* so thoroughly undercut the foundations of *Abood* that the decision remains only as an anomolous relic. Furthermore, principles of *stare decisis* do not require the Court to continue to adhere to a decision that has proven insufficient to protect constitutional rights. This is an ideal time to review the public employee unions' ability to garnish workers' paychecks to fund the inherently political act of collective bargaining for taxpayer-funded wages and benefits. *Knox*, 567 U.S. at 310 (A union inevitably "takes many positions during collective bargaining that have powerful political and civic consequences.").

The petition should be granted.

REASONS FOR GRANTING THE PETITION

I

ABOOD CONFLICTS WITH THE FIRST AMENDMENT AND SHOULD BE OVERRULED

A. This Case Involves Constitutional Protection of Workers' Individual First Amendment Rights

The most important part of freedom of expression is the right not to conform. It is relatively easy to create an enforced unity through political, legal, and social pressures, but the non-conformist must rely on the Constitution for protection. *See, e.g.*, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). To differ, or to refuse to support speakers or campaigns with which one disagrees, is often a lonely and courageous act, more in need of legal security than the right to join or to support an organization or movement. Dissent is by definition counter-majoritarian, which means that dissenters need the protection of institutions that shield them from coercion by the majority. *See, e.g.*, Cass R. Sunstein, *Why Societies Need Dissent* 98 (2003) ("[A]t its core, [the First Amendment] is designed to protect political disagreement and dissent."). The judiciary has a special duty to intercede on behalf of political minorities who cannot hope for protection from the majoritarian political process. *Wash. v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 486 (1982). Workers who disagree with the political views of labor unions are in precisely this situation, and this Court must therefore focus principally on protecting the right of workers to

determine how their earnings—essential both to their private property as well as their expressive rights—will be spent.

Cases in which labor unions deduct money from workers' paychecks to spend on political activities implicate important issues of free speech and freedom of association. Given that the right at issue is the freedom of political expression, a fundamental right subject to strict scrutiny, the Court should be particularly keen to preserve individual freedom of choice in cases involving the compulsory support of labor union activities. "To preserve the protection of the Bill of Rights for hard-pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights." *Glasser v. United States*, 315 U.S. 60, 70 (1942). Among other reasons for presuming against such a waiver are that the opposite presumption, or a scrutiny less than strict, could too easily blind courts to subtle coercion, or might allow workers, accidentally or through ignorance or duress, to waive vital constitutional liberties. In *Davenport*, this Court reinforced the primary concept of workers' individual rights in cases involving compulsory union support. Giving a private entity—the labor union—"the power, in essence, to tax government employees," was "unusual," 551 U.S. at 184, and a state may, consistent with the First Amendment, "eliminate . . . entirely" the "extraordinary benefit" of allowing the union to take money from the paychecks of workers to support union activities. *Id.* Thus, the analysis in all union fees/expression cases must begin with and follow the expressive rights of individual workers.

The Court followed this individual rights approach in *Knox*, which held that the Constitution requires a procedure to allow workers to choose whether they wish to pay for midyear assessments. 567 U.S. at 317. The Court suggested in dicta that such affirmative consent could be constitutionally required for annual agency shop fees as well and, further, that the Constitution might even forbid a state from forcing non-union public employees to pay any union dues at all. *Id.* at 310 (compelled membership in a public-sector union, which takes positions during collective bargaining that can have powerful civic and political consequences, can "constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights" (citation omitted)).

In *Harris*, 34 S. Ct. at 2643, this Court recognized that earlier cases—*Abood* and those cases on which it relied—allowing agency shop fees for public employee unions stood on shaky foundations, because those cases improperly focused on the union's desires and convenience over the individual constitutional rights of dissenting employees. It reaffirmed that "[a]gency-fee provisions unquestionably impose a heavy burden on the First Amendment interests of objecting employees." *Id.* And "free-rider arguments . . . are generally insufficient to overcome First Amendment objections." *Id.* at 2627.

Given the substantial disadvantage dissenting workers face when dealing with the social, legal, and political institutions governing organized labor, this Court must above all act to protect dissenting individual workers from a system which exploits them

and violates their rights of property, expression, and choice.

B. Unions Have No Constitutional Right to Garnish Workers' Wages for Any Purpose

Labor unions often complain that prohibiting the forced collection of union dues from non-union employees diminishes their effectiveness and imposes substantial hardships on them. *But cf. Knox*, 567 U.S. at 312 ("[R]equiring objecting nonmembers to opt out of paying the nonchargeable portion of union dues—as opposed to exempting them from making such payments unless they opt in—represents a remarkable boon for unions."). However, this Court's focus should not be on the difficulties faced by unions when the law compels them to ask permission from workers before taking their money. Instead, the focus must be on the freedom of choice of individual workers. *Id.* at 321 (the risk of pecuniary loss must lie with the "side whose constitutional rights are *not* at stake," i.e., the unions (emphasis added)). *Cf. Davenport v. Wash. Educ. Ass'n*, 551 U.S. 177, 187 (2007) ("For purposes of the First Amendment, it is entirely immaterial that [a law] restricts a union's use of funds only after those funds are already within the union's lawful possession . . . . What matters is . . . the union's extraordinary state entitlement to acquire and spend *other people's money*." (emphasis added)).

The special benefits legislatively granted to unions to garnish wages in support of union goals are not only inconsistent with constitutionally-protected individual rights, but they are frankly anti-constitutional. Public employee collective bargaining distorts the democratic process "because it gives one

interest group, public employees and their unions, an avenue of access that is unavailable to other interest groups and may, as a practical matter, preempt the voices of competing interest groups." Martin H. Malin, *Does Public Employee Collective Bargaining Distort Democracy: A Perspective from the United States*, 34 Comp. Lab. L. & Pol'y J. 277, 279 (2013). For example, police unions "are unparalleled in their ability to successfully advocate for policy proposals that conflict with traditional democratic values of accountability and transparency." Katherine J. Bies, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 Stan. L. & Pol'y Rev. 109, 112 (2017) (describing successful union lobbying to prohibit public disclosure of disciplinary records and the outcomes of misconduct investigations).

Most fundamentally, unions exist to promote the economic interests of their members, starting with negotiation of wages and benefits and extending to a wide variety of government policies that affect, even tangentially, the unionized workforce. They are private interest groups. But unlike their private-sector counterparts, the wages, benefits, working conditions, and opportunities for which public-sector unions negotiate are provided exclusively by the government, and paid for exclusively through tax dollars.

"Since the wages of public employees bear directly on the overtly political issue of state budgets, including the appropriate levels of public expenditure and taxation, the 'economic' advocacy of public employee unions touches directly on matters of political concern." *State Emp. Bargaining Agent Coal.*

v. Rowland, 718 F.3d 126, 134 n.7 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 1002 (2014). *See also Murray v. Town of Stratford*, 996 F. Supp. 2d 90, 116 n.33 (D. Conn. 2014) (union's successful advocacy for including overtime pay in pension benefit calculations increased the town's financial liability to retiring firefighters); *San Leandro Teachers Ass'n v. Governing Bd. of the San Leandro Unified Sch. Dist.*, 46 Cal. 4th 822, 836 (2009) (Public employee unions "have an important political dimension, given that they are governed by and negotiate with government entities."). As a result of largely unchallenged influence, public employee unions' "negotiation" of benefits has been the most significant cause of the public pension crisis.[3] In the negotiations between government and public employee unions, monopoly sits on one side of the table, and monopsony sits on the other. The taxpayer has no seat. The state of Illinois, from which this case arises, currently staggers under a $130 billion pension liability[4] as the state's financial health heads toward junk bond status.[5]

These adverse effects on the body politic are nearly impossible to reverse once the union is established as the exclusive bargaining representative. Once a union is certified, it remains

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[3] *See* Joshua D. Rauh, *The Public Pension Crisis*, Defining Ideas (Hoover Inst. Apr. 12, 2016), http://www.hoover.org/research/public-pension-crisis.

[4] *See, e.g.*, Dave McKinney, *Illinois' unfunded pension liabilities reach $130 billion: study*, Reuters (Dec. 10, 2015), http://www.reuters.com/article/us-illinois-pensions-idUSKBN13 B29N.

[5] Elizabeth Campbell, *S&P, Moody's Downgrade Illinois to Near Junk, Lowest Ever for a U.S. State*, Bloomberg (June 1, 2017), https://www.bloomberg.com/news/articles/2017-06-01/illinois-bonds-cut-to-one-step-above-junk-by-s-p-over-stalemate.

entrenched in power unless and until it is decertified. As a practical matter, unions remain in power for years as it is rare that a certified union will be dislodged through decertification. Most public employee unions were certified in the 1960s and 1970s, when the law first permitted such unions. New York City schoolteachers voted to certify the United Federation of Teachers in 1961,[6] and there has never been a subsequent election. As a result, few current public employee union members ever cast a vote for the certification of their exclusive representative. This state of affairs is "fundamentally undemocratic," particularly when contrasted with the frequent federal elections by which citizens choose their political representatives. Andrew Buttaro, *Stalemate at the Supreme Court: Friedrichs v. California Teachers Association, Public Unions, and Free Speech*, 20 Tex. Rev. L. & Pol. 341, 388 (2016).

Given the politically weak positions of dissenting workers, the unions' documented and pervasive abuses of the state-granted ability to garnish wages,[7] the lack of protection in administrative agencies,[8] and the fundamental

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[6] United Federation of Teachers, *50 Years: 1960-2010*, http://www.uft.org/files/attachments/uft-50-years-book.pdf. The union won certification on the vote of 20,045 teachers. It currently represents over 200,000 teachers, nurses, and other public employees. United Federation of Teachers, *Who We Are*, http://www.uft.org/who-we-are.

[7] *See generally*, Linda Chavez & Daniel Gray, *Betrayal: How Union Bosses Shake Down Their Members and Corrupt American Politics* (2004).

[8] *See* U.S. House of Rep. Comm. on Oversight and Gov't Reform, *President Obama's Pro-union Board: The NLRB's Metamorphosis from Independent Regulator to Dysfunctional*

importance of the expressive and associative rights at issue, protecting the individual's freedom to choose—and to dissent—in a unionized workplace must be the guiding principle in this case. *See* Harry G. Hutchison, *Diversity, Tolerance, and Human Rights: The Future of Labor Unions and the Union Dues Dispute*, 49 Wayne L. Rev. 705, 717 (2003) (The "proper mooring" of "the union dues dispute" is "freedom of conscience."). *Abood* is flatly incompatible with individual rights, and this Court should grant the petition to reconsider and overrule it.

II

STARE DECISIS SHOULD NOT BAR RESOLUTION OF THE ISSUE IN THIS CASE

An exceptionally important constitutional issue is presented by this case: whether the First Amendment prohibits compelled payment of dues to public employee unions. *Abood* permits such compulsion, but *Harris* provided the first real analysis of *Abood* that examined the cases on which it is based, and concluded that the "*Abood* Court seriously erred" in its application of earlier cases, and "fundamentally misunderstood" their holdings. *Harris*, 134 S. Ct. at 2632. Moreover, the *Abood* Court failed to "anticipate[] the magnitude of the practical administrative problems" in "attempting to classify public-sector union expenditures" as chargeable or not; or of the employees who "bear a heavy burden if they wish to challenge the union's actions." *Id.* at 2633. In short, the *Abood* decision after *Harris*

Union Advocate (Dec. 13, 2012), http://oversight.house.gov/wp-content/uploads/2012/12/NLRB-Report-FINAL-12.13.12.pdf.

appears to be a hollow shell, unworthy of this Court's deference.

In the realm of constitutional interpretation, considerations of *stare decisis* are at their weakest. *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-73 (1989). It is appropriate to overrule previous decisions when intervening changes have "removed or weakened the conceptual underpinnings from the prior decision." *Id.* at 173. This has happened with regard to the presumption of conformity created by *Abood* and other cases: the unions' purposeful evasion of this Court's workers' rights decisions has proven that presumption to be unworkable.

Moreover, a principle ensconced in a court opinion that requires a particular procedural remedy cannot be immunized by *stare decisis* "once [the procedural rule] is proved to be unworkable in practice; the mischievous consequences to litigants and courts alike from the perpetuation of an unworkable rule are too great." *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965). For this reason, this Court is willing to reconsider judicial decisions that proved cumbersome in operation. *See, e.g.*, *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009) ("[T]he fact that a decision has proved 'unworkable' is a traditional ground for overruling it." (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991))). *Abood* works all too well for unions desiring to spend "other people's money," but provides no constitutional protection for non-consenting workers, a fact that the unions have abused in their increasingly aggressive attempts to bolster political war chests. *Cf. Knox*, 567 U.S. at 314 (The "aggressive use of power by the SEIU to collect fees from nonmembers is indefensible.").

In addition, there has been no individual or social reliance on the presumption of conformity that would justify the taking of workers' earnings to subsidize a union's strategic purposes. The dissent in *Harris* emphasizes that unions and governments relied on *Abood* and did not want to disturb those reliance interests. *Harris*, 134 S. Ct. at 2645 (Kagan, J., dissenting) ("The *Abood* rule is deeply entrenched, and is the foundation for not tens or hundreds, but thousands of contracts between unions and governments across the Nation."). The dissent's assessment of reliance interests ignores, however, the individual workers whose constitutional rights must be the primary focus. *See Knox*, 567 U.S. at 312 ("[W]hat is the justification for putting the burden on the nonmember to opt out of making such a payment? Shouldn't the default rule comport with the probable preferences of most nonmembers?"). Default rules effectively favor the unions' garnishment of wages. Consistent with people's general inertia and tendency to defer to the wishes of those in positions of authority, many workers will "unwittingly favor the default rule in light of the technical nature of the subject; pressure to conform to union priorities renders the endorsement effect more explicit than implicit." Buttaro, *supra*, at 380. Other workers are unaware of the rules governing agency shop fees and union dues, and have no settled expectations with regard to them. *See generally* Jeff Canfield, Comment, *What a Sham(e): The Broken Beck Rights System in the Real World Workplace*, 47 Wayne L. Rev. 1049 (2001); R. Bradley Adams, *Union Dues and Politics: Workers Speak Out Against Unions Speaking for Them*, 10 U. Fla. J. of L. & Pub. Pol. 207, 222 (1998) ("[A]s a practical matter, if employees are not aware that they

need only 'object' in order to trigger their First Amendment rights under a union or agency shop, these rights remain dormant. In fact, most union members are unaware of their right to prevent the union from spending their fees and dues on political causes.").

Considerations of *stare decisis* should not lead this Court to permit states to require union membership or its monetary equivalent; or to require workers to assert their objection to the taking of their earnings for the subsidizing of union political speech. When a precedent's "logic threatens to undermine our First Amendment jurisprudence and the nature of public discourse more broadly—the costs of giving it *stare decisis* effect are unusually high." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 382 (2010).

CONCLUSION

This Court should require public employee unions to join the great American tradition of voluntary associations, where participants willingly contribute their time and treasure to common goals. In so doing, this Court would restore the primacy of individual rights under the First Amendment.

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

DEBORAH J. LA FETRA
Counsel of Record
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
E-mail: DLaFetra@pacificlegal.org

Counsel for Amici Curiae Pacific Legal Foundation, et al.